BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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In the Matter of	)	
	)	
1998 Biennial Regulatory Review –	)	MM Docket No. 98-35
Review of the Commission's Broadcast Ownership	)	
Rules and Other Rules Adopted Pursuant to Section	)	
202 of the Telecommunications Act of 1996	)	

SUPPLEMENTAL COMMENTS OF THE WB TELEVISION NETWORK

THE WB TELEVISION NETWORK

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TABLE OF CONTENTS

SUMMARY

The WB Television Network ("The WB"), by its attorneys, hereby submits the following supplemental comments in connection with the above-captioned proceeding. Due to its remote affiliation with Time Warner Cable, the current television station/cable system cross-ownership rule prevents The WB, unlike any of the other national broadcast networks, from holding even non-controlling attributable investment interests in affiliated local broadcast stations in many television markets. This situation limits The WB's flexibility and creates a competitive disadvantage for the network. Any FCC regulation which stifles the ability of an emerging broadcast television network such as The WB to compete contravenes the well-established public interest goal of promoting new television networks and thus must be repealed as part of the Commission's ongoing biennial regulatory review.

Other entities have filed supplemental comments in this proceeding seeking to emphasize how changing competitive conditions have rendered various FCC media ownership rules obsolete. In particular, Viacom, Inc. ("Viacom") has made a compelling showing regarding how certain of the Commission's ownership rules create unjustifiable regulatory barriers to the establishment of financially viable emerging television networks. Indeed, The WB has faced virtually identical hurdles as those faced by Viacom in its quest to provide a competitive over-the-air alternative to the four entrenched broadcast networks, with one exception. Unlike UPN, The WB has no stable of owned and operated affiliated television stations to generate profits to offset the network's substantial start-up losses because of the application of the television station/cable system cross-ownership rule. Thus, The WB has suffered from regulatory disadvantages far greater than those outlined by Viacom with respect to UPN.

Accordingly, The WB is filing these comments to ensure a complete record, to echo the concerns raised by Viacom, and to urge the Commission to dismantle all anachronistic regulatory impediments faced by emerging broadcast networks in a comprehensive manner, rather than in a piecemeal fashion, thereby ensuring that all emerging networks have an equal opportunity to succeed in the marketplace and to explore strategic alliances with established networks. Thus, if the Commission elects to afford Viacom regulatory relief from the dual network rule and/or the national ownership cap to facilitate the proposed CBS/UPN combination, it must simultaneously afford The WB relief from the television station/cable system cross-ownership rule, as well as the dual network rule (to the extent such rule may apply to The WB) to provide the same degree of flexibility for The WB to explore a combination or strategic alliance with an established broadcast network. This grant of regulatory relief to The WB would serve the longstanding Commission policy to promote the development of competitive new broadcast television networks and would be consistent with historical Commission practice of granting emerging networks relief from regulatory burdens.

Moreover, the time is ripe for the Commission to repeal the unconstitutional television station/cable system cross-ownership rule. Over seven years ago, the Commission expressly concluded that the rule can no longer be justified and recommended that Congress repeal the rule. While Congress implemented the Commission's recommendation and repealed the statutory television station/cable system cross-ownership provision almost four years ago, the Commission thus far has failed to repeal its version of the rule. Clearly, the ongoing Biennial Review of the broadcast ownership rules provides the perfect opportunity for the Commission to implement its long-standing conclusion that the television station/cable system cross-ownership rule should be eliminated.

Indeed, current competitive circumstances provide more than enough justification to abolish the arcane television station/cable system cross-ownership rule - - a rule that has far outlived its original purpose. The current competitive climate led to the recent relaxation of both the duopoly and the one-to-a-market rules, and the same logic that compelled the relaxation of those rules dictates complete elimination of the television station/cable system cross-ownership rule, particularly in light of the Commission's historic proclivity to repeal the ban. At the very least, while the Commission considers the long-overdue elimination of the ban, parties should be allowed to elect to enter into a television station/cable system combination in a particular market in lieu of taking advantage of the relaxed duopoly or one-to-a-market rules in that individual DMA. Such an interim solution will avoid compounding the current competitive harm borne by The WB in complying with a cross-ownership rule that the Commission has already determined to be unnecessary.

Most important, however, continued application of the television station/cable system cross-ownership rule is unconstitutional. At the very least, the ban is subject to intermediate scrutiny, under which the Commission must demonstrate that the restriction on speech furthers an important or substantial governmental interest and is narrowly tailored to the furtherance of that interest. However, the Commission's own recognition in 1992 that the competitive landscape hand changed to such an extent that it felt compelled to recommend that Congress repeal the television station/cable system cross-ownership rule serves as undeniable proof that the ban is not necessary, and thus, not narrowly tailored to serve the stated governmental interests in competition and diversity. And, without question, competition is even more vibrant today than it was in 1992.

Accordingly, for the foregoing reasons, The WB respectfully requests that the Commission eliminate the television station/cable system cross-ownership rule and the dual network rule.

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
1998 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	))))	MM Docket No. 98-35

SUPPLEMENTAL COMMENTS OF THE WB TELEVISION NETWORK

The WB Television Network ("The WB"), by its attorneys, hereby submits the following supplemental comments in response to the above-captioned Notice of Inquiry.[1] The WB, the fifth and fastest growing broadcast television network in the country,[2] is a limited partnership whose general managing partner is WB Communications, a division of Time Warner Entertainment Company, L.P. ("TWE"). A separate and independently managed and operated division of TWE, Time Warner Cable, operates numerous franchised cable systems across the country. Consequently, the current television station/cable system cross-ownership rule prevents The WB, unlike any of the other national broadcast networks, from holding even non-controlling

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[1]In the Matter of 1998 Biennial Regulatory Review - Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Notice of Inquiry, 13 FCC Rcd 11276 (1998) ("1998 Biennial Review NOI").

[2]The WB was launched on January 11, 1995, with two hours of prime time programming per week, carried by 48 affiliated stations nationwide. The WB is currently broadcasting thirteen hours of prime time programming on six nights, and carried by over 65 affiliated but independently owned local broadcast stations.

attributable investment interests in affiliated local broadcast stations in many television markets.[3] Accordingly, The WB is uniquely impacted by the unjustifiable continued application of the Commission's television station/cable system cross-ownership restriction (hereinafter the "television station/cable system cross-ownership rule")[4] as well as the possible application of the dual network rule.[5]

I. INTRODUCTION

The WB filed timely comments in this proceeding on August 21, 1998. Therein, The WB demonstrated that the television station/cable system cross-ownership rule has far outlived its original purpose and no longer serves the public interest because it limits the distribution options of an emerging television broadcast network such as The WB, which shares some corporate linkage with a cable operator. This restriction has served to dampen competition with the other national televison broadcast networks in the distribution arena. Any FCC regulation which could stifle the ability of an emerging broadcast television network to compete contravenes the well-established public interest goal of promoting new television networks and thus must be repealed in

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[3]Although numerous stations affiliated with The WB are controlled by entities that hold a significant interest in the network other than TWE, The WB does not own or control any stations itself. As described below, this situation limits the network's flexibility and creates a competitive disadvantage for The WB.

[4]47 C.F.R. § 76.501(a).

[5]As discussed *infra* at footnote 10, even under the most expansive reading, the dual network rule does not encompass The WB. However, to the extent the Commission may believe the rule does apply to The WB, the network urges that the rule be eliminated so as to avoid any negative impact on the growth of emerging networks such as The WB.

accordance with Congress' statutory directive in Section 202(h) of the Telecommunications Act of 1996.[6]

Subsequently, several supplemental filings have been submitted by various entities seeking to emphasize how changing competitive conditions have rendered various FCC media ownership rules obsolete. See, e.g., Emergency Petition for Relief of the Newspaper Association of America, filed August 23, 1999 ("NAA Petition") [attacking television station/newspaper cross-ownership rule]; Emergency Petition for Relief and Supplemental Comments of Fox Television Stations, Inc., filed November 18, 1999 ("Fox Petition") [attacking national television station ownership cap]; Comments of Viacom Inc., filed November 19, 1999 ("Viacom Comments") [attacking dual network rule and national television station ownership cap].

In particular, the recent Viacom Comments make a compelling showing as to how certain of the Commission's ownership rules create unjustifiable regulatory barriers to the establishment of financially viable emerging television networks. The WB is filing these Supplemental Comments to ensure a complete record, to echo the concerns raised by Viacom, and to urge the Commission to dismantle all such anachronistic regulatory impediments faced by emerging broadcast networks in a comprehensive manner, rather than in a piecemeal fashion, thereby ensuring that all emerging networks have an equal opportunity to succeed in the marketplace and to explore strategic alliances with established networks.

As the Commission is aware, Viacom has sought FCC approval to acquire CBS, a merger which would result in a combination of television stations, television networks, radio stations,

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[6]Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), § 202(h) ("1996 Telecommunications Act").

motion picture production and distribution facilities, television program syndication, video rental, outdoor advertising, publishing and cable network assets beyond the levels currently allowed by numerous FCC rules. Viacom's Comments offer a persuasive showing regarding the economic efficiencies and other benefits which might flow from common ownership or other strategic alliances between an established network and an emerging network. For example, Viacom notes that

> The Commission has long recognized the efficiencies that can be derived from common ownership, including: joint financial, legal, research, and administrative and support functions; joint purchasing of equipment (especially with the high cost of digital conversion); joint purchasing of services (e.g., programming consultants, ratings services); joint negotiation for exhibition rights to syndicated programming; fluidity in the allocation of scare human resources, such as on-air talent and specialized management; and sharing of news and program resources among stations.[7]

With respect to the specific benefits which might flow to UPN, Viacom asserts that a combined Viacom/CBS could make available to UPN "extensive libraries of programming, valuable brands, and the resources and expertise to develop and distribute new programming efficiently."[8] Moreover, Viacom notes that a UPN/CBS combination would experience substantial savings "by combining 'backroom' operations such as accounting, traffic, business affairs, financial reporting, and engineering."[9]

The WB fully agrees that substantial benefits can flow from a combination or strategic alliance between an emerging network like UPN or The WB and an established network. The

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[7]Viacom Comments at 18.

[8]Id. at 34.

[9]Id.

WB also concurs with Viacom that antiquated regulatory barriers restrict full realization of such benefits. In its Comments, Viacom focuses exclusively on the dual network rule[10] and the national audience cap, given that these restrictions both pose significant barriers to Viacom's proposed acquisition of CBS. In the case of The WB, in addition to the possible application of the dual network rule, it is the television station/cable system cross-ownership rule which stands in the way of similar creative business arrangements with an established network.

As Viacom correctly points out, the Commission's rules should not unfairly discriminate among or against emerging networks; indeed, "fundamental fairness and basic principles of administrative law require that the Commission accord comparable treatment to parties that are similarly situated."[11] Thus, if the Commission elects to afford Viacom regulatory relief from the

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[10]The Viacom Comments suggest that UPN may not be subject to the dual network rule because UPN, as of February 8, 1996, provided four or more hours of programming per week on a national basis pursuant to network affiliation agreements with local television broadcast stations in markets reaching approximately 73 to 74 percent of television homes through primary, full power television station affiliates. Viacom Comments at 38-42. When secondary full power affiliates are added, Viacom concedes that UPN's coverage was over 91 percent in 1996, well above the 75 percent threshold established by the dual network rule. UPN's coverage was even greater if low-power television stations are added in, although Viacom neglects to reveal the extent of UPN's coverage through LPTV affiliates in 1996.

While The WB fully agrees that the dual network rule is outmoded, unnecessary, and should be repealed, The WB takes no position regarding Viacom's suggested interpretation of the dual network rule. However, it is important for the Commission to recognize that, even under the most expansive reading, the dual network rule does not apply to The WB. When coverage through primary local affiliates, secondary local affiliates, and LPTV stations are aggregated, The WB, as of February 8, 1996, provided four or more hours of programming per week on a national basis pursuant to network affiliation agreements with local television broadcast stations in markets reaching less than 71 percent of television homes, well below the 75 percent threshold. See Exhibit 1.

[11]Viacom Comments at 41, citing Melody Music Inc. v. FCC, 345 F.2d 730, 732 (D.C.
(continued...)

dual network rule and national ownership cap to facilitate the proposed CBS/UPN combination, it must simultaneously afford The WB relief from the television station/cable system cross-ownership rule to provide the same degree of flexibility for The WB to explore a combination or strategic alliance with an established broadcast network.

II. PROMOTION OF EMERGING BROADCAST NETWORKS HAS LONG BEEN A MATTER OF THE HIGHEST PRIORITY FOR THE COMMISSION.

The grant of regulatory relief by the abolishment of the dual network rule and the television station/cable system cross ownership rule would serve longstanding Commission policy. For many years, the Commission has sought to promote the development of competitive new broadcast television networks, in part by relieving emerging networks from unnecessary regulatory burdens. As explained below, the Commission's Notice of Inquiry in this very proceeding demonstrates that the emergence of the fledgling WB and UPN networks has not caused the Commission to relax its historic goal.

As early as 1946, the Commission adopted a rule prohibiting network ownership of television stations in certain small markets with few desirable outlets. That prohibition was based upon an existing radio ownership rule, which had been adopted to encourage the creation and growth of new networks.[12] In proposing to adopt new rules in 1965 to restrict the three

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[11](...continued)
Cir. 1965); Cable Television Syndicated Program Exclusivity Rules, 79 FCC 2d 663, 797 n. 309 (1980).

[12]In The Matter of Review of the Commission's Regulations Governing Television Broadcasting, Report and Order, 10 FCC Rcd 4538, ¶ 5 (1995) ("Network Ownership Report and Order") (eliminating the former Section 73.658(f) of the FCC rules).

television networks' ability to take financial interests in and to syndicate programming, the Commission voiced its hope that the rules would provide new program sources for additional UHF outlets, which in turn could form the basis for a new network.[13] The Commission adopted these "Fyn-Syn" rules in 1970.[14] On reconsideration, it made clear that:

> *Encouragement of the development of additional networks to supplement or compete with existing networks is a desirable objective and has long been the policy of this Commission.* Hence we have redefined the term "network" in the Prime Time Access Rule to apply only to the major national television networks. This will remove any doubt that our actions are intended to encourage the competitive development of additional networks as well as other alternative program sources.[15]

Even when the Commission later expressed doubts regarding its Fyn-Syn rules, it reaffirmed the goal of fostering the creation of additional television networks. For example, in 1983 the Commission voiced concern that these rules could actually inhibit the formation of new competing networks, particularly "hybrid" networks with both broadcast and cable affiliates.[16]

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[13] Competition and Responsibility in Network Television Broadcasting, Notice of Proposed Rulemaking, 30 Fed. Reg. 4065, ¶ 26 (1965).

[14] In The Matter of Amendment of Part 73 of the Commission's Rules and Regulations With Respect To Competition and Responsibility In Network Television Broadcasting, Report and Order, 23 FCC 2d 382, ¶ 21 (1970) (subsequent history omitted).

[15] In The Matter of Amendment of Part 73 of the Commission's Rules and Regulations With Respect To Competition and Responsibility In Network Television Broadcasting, Memorandum Opinion and Order, 25 FCC 2d 318, ¶ 34 (1970) (emphasis added and subsequent history omitted).

[16] In the Matter of Amendment of 47 C.F.R. Sec. 73.658(j)(1)(i) and (ii), The Syndication and Financial Interest Rules, Tentative Decision and Request for Further Comments, 94 FCC 2d 1019, ¶¶ 185-88 (1983) (subsequent history omitted).

The Commission also has repeatedly granted emerging networks relief from regulatory burdens. In 1990, for example, the Fox Broadcasting Company received a temporary waiver of the Fyn-Syn rules to further "significant public interest objectives," including to "advance the Commission's oft-stated public interest objective of encouraging new national networks."[17] Subsequently, in amending its Fyn-Syn rules in 1991, the Commission adopted special transitional rules for "emerging networks." It reasoned that:

> An important goal in this proceeding in to encourage the development of emerging networks. Indeed, promoting establishment of a fourth or even fifth national network has been a consistent interest of the FCC for many years . . . . We find that new networks will provide an increase in the amount and diversity of prime time entertainment programming that will ultimately benefit the public and lessen the need for future regulation of broadcast networks.[18]

Nor has this longstanding public interest goal been negated by the establishment of Fox as a full-fledged network and the continued emergence of The WB and UPN networks. Thus, in 1995 the Commission eliminated its prohibition on network ownership of television stations in certain small markets only after concluding that "it is not likely that network ownership of a station in these small markets can effectively be used to block the emergence of competing new networks," citing the development of The WB and UPN networks.[19] Indeed, in initiating this very proceeding, the Commission specifically sought comment on the effect of the 35% national

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[17] In The Matter of Fox Broadcasting Company, 5 FCC Rcd 3211, ¶ 4 (1990) (footnote omitted).

[18] In The Matter of Evaluation of the Syndication and Financial Interest Rules, Report and Order, 6 FCC Rcd 3094, ¶ 159 (1991) (footnote omitted), vacated, Schurz Communications v. FCC, 982 F.2d 1043 (7th Cir. 1992) (subsequent history omitted).

[19] Network Ownership Report and Order at ¶ 9.

television ownership cap on "existing television networks or the formation of new networks . . . ."[20] Because The WB and UPN remain fledgling networks, it continues to be in the public interest to promote their economic viability and continued growth. Moreover, outdated regulations that hinder the viability and growth of emerging networks clearly contravene the public interest.

III. THE WB AND UPN HAVE FACED VIRTUALLY IDENTICAL HURDLES IN THEIR EFFORTS TO ESTABLISH NEW NETWORKS, AND ARE EQUALLY WORTHY OF RELAXED REGULATORY TREATMENT.

Viacom's Comments make a compelling showing as to the ways in which the Commission's outdated media ownership rules have served to disadvantage UPN's efforts to establish itself as a national television network. The WB has faced virtually identical hurdles in its quest to provide a competitive over-the-air alternative to the four entrenched broadcast networks.

- Like UPN, The WB was developed in 1994 as a co-venture between a studio (Warner Bros.) and a TV group owner (Tribune). See Viacom Comments at 25.
- Like UPN, and unlike the four established networks, The WB does not pay compensation to its affiliates. Thus, like UPN, The WB must attract affiliates on the merits of its programming alone. See id. at 26.
- Like UPN, The WB "was forced to cobble together a national network of affiliates comprised of less desirable UHF stations and, in a number of markets, of LPTV facilities, most of which are at a substantial coverage disadvantage vis-a-vis competing stations affiliated with the established 'Big Four' networks." Id.
- Like UPN, in some markets, The WB "was not able to secure an over-the-air affiliate at all and, instead, attempted to arrange fill-in cable carriage." Id.

[20] 1998 Biennial Review NOI at ¶ 16.

- Like UPN, some of The WB's "affiliates agreed to carry the new network's programming only on a secondary basis, reserving their prime-time hours to the carriage of their primary networks." Id.

- Like UPN, The WB "has endeavored to carve a niche for itself in the highly competitive television industry and, in doing so, has presented programming that appeals to traditionally underserved audiences." See id. at 27.

- Like UPN, The WB "has suffered significant financial losses in every year of its existence." See id. at 4, 33.

- Like UPN, The WB, since its inception, "has been disadvantaged by the inherent limitations of its affiliate line-up." See id. at 31.

In addition, The WB's affiliates face the same burdens as UPN's affiliates:

- Like UPN, in certain instances The WB's affiliates tend "to be among the financially weaker stations in their markets." Like UPN, such affiliates depend on The WB "for programming branding and marketing. A weakening of the network could have serious economic consequences for these stations." See Viacom Comments at 33.

- Like UPN, The WB "is an extremely important resource for start-up television stations and for struggling independent stations." See id. at 36.

There is only one significant difference in the picture painted by Viacom regarding UPN's start-up efforts compared to the obstacles faced by The WB. Viacom concedes that "the Viacom owned and operated stations have been especially critical because they provide a source of profits to fund network development and program distribution."[21] Unlike UPN, The WB has no stable of owned and operated ("O&O") affiliated television stations to generate profits to offset the

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[21] See Viacom Comments at 4.

network's substantial start-up losses.[22] Thus, The WB has suffered from regulatory disadvantages far greater than those outlined by Viacom with respect to UPN.

The benefits of O&O television stations to an emerging network cannot be overstated. As noted by Viacom:

> A network relies on the profits generated by affiliated O&Os to justify its investment in programming. Restricting a network's ownership of profitable stations, therefore, substantially decreases its incentive to invest in programming developed solely for television. Instead, it increases a network's incentive to divert its resources to creating cable networks, where it can earn revenues through subscription fees as well as advertising sales.[23]

Similarly, Viacom stresses that "[o]wned and operated stations provide the only real guarantee of long-term carriage of a network's programming . . . . Moreover, in today's marketplace, O&Os are typically the principal, if not the only source, of a network operator's profits."[24] Viacom goes on to note that the "Commission has long recognized the importance of a strong O&O group to a network's health."[25]

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[22]While Tribune Broadcasting Company owns approximately 25% of The WB and also owns several television broadcast stations, none of the revenues devived by the Tribune stations inure to the benefit of The WB, unlike the scenario described by Viacom with respect to its O&Os.

[23] Viacom Comments at 21.

[24]Id. at 42.

[25]Id. at 43, citing Report on Chain Broadcasting, Commission Order No. 37, Docket No. 5060, at 66-67 (1971); Amendment of Rules and Regulations Relating to Multiple Ownership of Television Broadcast Stations, 43 FCC 2797, 2801 (1951); Notice of Proposed Rulemaking, Amendment of Sections 73.35, 73.240 and 73.636 of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations, 95 FCC 2d 360, 382 (1983).

The WB concurs with Viacom's analysis of the significant benefits which accrue to an emerging network from joint operation of O&O television stations. The WB understands Viacom's concern that UPN might be financially crippled if it is severed from the Viacom O&Os. The WB merely wishes to point out that it has had to try to develop an emerging network without the financial subsidies from numerous affiliated O&Os as enjoyed by UPN. The principal reason for this regulatory disadvantage faced by The WB is the continued application of the Commission's television station/cable system cross-ownership rule.

The WB also fully agrees with Viacom's analysis of the economic efficiencies and other benefits which might flow from joint ventures, common ownership, or other forms of strategic alliances between an emerging network and an established network.[26] The dual network rule is unquestionably an anachronistic regulatory obstacle to the realization of such efficiencies. In the case of UPN, the national audience cap poses an equally formidable barrier to its proposed combination with CBS. In the case of The WB, it is the television station/cable system cross-ownership rule which stands in the way of similar creative business arrangements with an established network.

As Viacom correctly points out, the Commission's rules should not unfairly discriminate among or against emerging networks; indeed, "fundamental fairness and basic principles of administrative law require that the Commission accord comparable treatment to parties that are similarly situated."[27] Thus, if the Commission elects to afford Viacom regulatory relief from the

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[26]Viacom Comments at 18, 34.

[27]Id. at 41, citing Melody Music Inc. v. FCC, 345 F.2d 730, 732 (D.C. Cir. 1965); Cable (continued...)

dual network rule and/or the national ownership cap to facilitate the proposed CBS/UPN combination, it must simultaneously afford The WB relief from the television station/cable system cross-ownership rule to provide the same degree of flexibility for The WB to explore a combination or strategic alliance with an established network.

IV. THE FCC SHOULD NOT AS A MATTER OF POLICY, AND CANNOT AS A MATTER OF LAW, GRANT REGULATORY RELIEF TO CERTAIN COMPETITORS BUT NOT EQUIVALENT RELIEF TO OTHERS.

As demonstrated by the Viacom comments cited above, both UPN and The WB are worthy of relaxed regulatory treatment. As a matter of sound public policy, equivalent regulatory relief should be applied to all such competitors, regardless of the other entities with which their parent companies might ultimately be affiliated, in order to establish a level playing field. Thus, The WB should have the same flexibility as any other emerging network to enter into a joint venture or strategic alliance with an established network, even if such arrangements would cause TWE to acquire an attributable interest in the broadcast stations of that established network. Moreover, as Viacom aptly notes in its comments, well-established principles of administrative law require the Commission to provide comparable regulatory treatment to similarly-situated entities.[28] As emerging networks that have faced and continue to face many of the same hurdles, UPN and The WB are similarly-situated for purposes of receiving badly-needed regulatory relief.

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[27](...continued)
Television Syndicated Program Exclusivity Rules, 79 FCC 2d 663, 797 n. 309 (1980).

[28]See, e.g., Melody Music, Inc. v. FCC , 345 F.2d 730 (D.C. Cir. 1965).

Indeed, the U.S. Court of Appeals for the D.C. Circuit has recognized that it would be arbitrary and capricious for the Commission to grant regulatory relief to one applicant but deny equivalent relief to another in similar circumstances. In Tribune Company v. FCC, 133 F.3d 61 (D.C. Cir. 1998), Tribune appealed the Commission's refusal to grant it a temporary waiver of the television station/newspaper cross-ownership rule pending the outcome of a future rulemaking regarding that prohibition or a related waiver policy, following Tribune's merger with a TV licensee. (Tribune had been granted a brief, temporary waiver for divestiture purposes only, which would likely have expired prior to the end of any such rulemaking.) The Court of Appeals found that Tribune's "most compelling" argument was that the Commission had been arbitrary and capricious for not staying the divestiture period pending a rulemaking, when it had previously allowed the combined Capital Cities/Walt Disney Company to retain a daily newspaper/radio combination until six months after the conclusion of a proceeding to review the newspaper/radio cross-ownership waiver policy. Although the court ultimately concluded that it was foreclosed from hearing Tribune's claim, based upon the appellant's failure to exhaust its administrative remedies, the court made clear its belief that the two applicants warranted equivalent regulatory treatment, although two different newspaper cross-ownership rules -- one applicable to radio and one to television -- were actually involved.[29]

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[29]Tribune Company v. FCC, 133 F.3d at 70. Subsequently, the Commission's Mass Media Bureau extended Tribune's temporary waiver for a period to expire six months after completion of the Commission's review of the television station/newspaper cross-ownership rule, to be conducted as part of the initial biennial review of media ownership rules mandated by the 1996 (continued...)

The regulatory relief sought by UPN will allow one of its controlling parent companies to hold an interest in an established broadcast network with a significant distribution system of owned and operated stations. In order for The WB to receive equivalent regulatory relief, so that it may also take advantage of a joint venture or strategic alliance with an existing broadcast network, the Commission must simultaneously waive or repeal the television station/cable system cross-ownership restriction, in addition to granting whatever relief to Viacom/UPN the Commission deems appropriate. Indeed, the Commission has long recognized that emerging networks would need to utilize cable outlets in markets where equivalent broadcast affiliates are not available to them.[30] Thus, it was not surprising that a company which itself has cable interests might invest in a new broadcast network that could rely on distribution by those systems, if necessary. Such a network could not continue to grow, however, without eventually obtaining access to stronger broadcast outlets. No cable system is capable of covering the same geographic territory and population within a DMA as the strongest broadcast outlets in that DMA. Thus, a broadcast partner may ultimately be necessary for a fledgling network to remain viable.

Moreover, unlike the Tribune case, a proceeding is already pending in which equivalent relief can be granted to The WB. Both UPN and The WB have argued for relief from the dual network rule in this Biennial Review. Viacom has further sought relief from the television

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[29](...continued)
Telecommunications Act. In re Stockholders of Renaissance Communications Corporation, 13 FCC Rcd 4717 (1998).

[30]See, e.g., In the Matter of Amendment of 47 C.F.R. Sec. 73.658(j)(1)(i) and (ii), The Syndication and Financial Interest Rules, Tentative Decision and Request for Further Comments, 94 FCC 2d 1019, ¶¶ 185-88 (1983) (subsequent history omitted).

ownership cap, whereas The WB has sought relief from the television station/cable system cross-ownership rule. Through this proceeding, the Commission can provide even-handed relief to all emerging networks.[31]

If the Commission allows the combined Viacom/CBS to retain an attributable interest in the UPN Network, then it must also now act to provide a similarly-situated network, The WB, with equivalent regulatory relief, by either: (1) eliminating the television station/cable system cross-ownership rule or (2) exempting entities with interests in emerging television networks such as The WB from that prohibition. Moreover, the failure to provide consistent regulatory relief in The WB's case would be particularly untenable. As discussed below, the regulations from which The WB seeks such relief rest upon outdated and unsupportable assumptions, and no longer further the public interest.

V. THE TELEVISION STATION/CABLE SYSTEM CROSS-OWNERSHIP RULE IS CONTRARY TO THE PUBLIC INTEREST.

While its harmful effects on emerging broadcast television networks are particularly worrisome, the time is now ripe for the Commission to eliminate the television station/cable system cross-ownership rule as it applies to <u>all</u> television broadcasters and <u>all</u> cable system operators nationwide. It has been well over seven years since the Commission expressly concluded that the rule can no longer be justified, noting that

> we believe that the rationale for an absolute prohibition on broadcast-cable cross-ownership is no longer valid in light of the ongoing changes in the video marketplace. . . .

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[31] <u>See</u>, <u>e.g.</u>, <u>Capital Cities/ABC, Inc. and The Walt Disney Company</u>, 11 FCC Rcd 5841, 5917 (1996), Separate Statement of Commissioner Susan Ness (rules should not be changed on an *ad hoc* basis apart from public comment by all affected parties).

> [W]e recommend that Congress repeal the broadcast-cable cross-ownership rule to permit us to allow local broadcasters to own cable systems in their service areas.[32]

It has been almost four years since Congress implemented the Commission's recommendation and removed the underlying statutory basis for the Commission's television station/cable system cross-ownership rule,[33] thus leaving only the FCC rule which the Commission itself had already found invalid. Yet, the Commission thus far has failed to repeal the rule.

Clearly, the ongoing Biennial Review of the broadcast ownership rules and restrictions mandated by Section 202(h) of the 1996 Telecommunications Act provides the perfect opportunity for the Commission to implement its long-standing conclusion that the television station/cable system cross-ownership rule should be eliminated. Indeed, pursuant to Section 202(h) of the 1996 Telecommunications Act, the Commission must conduct a *de novo* review of all of its broadcast ownership rules and affirmatively find that such rules "are necessary in the public interest as the result of competition" and must "repeal or modify any regulation it determines to be no longer in the public interest."[34] As explained in further detail below, current competitive circumstances, which Section 202(h) requires the Commission to consider in its public interest inquiry, provide more than enough justification to abolish the arcane television station/cable system cross-ownership rule.

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[32] In the Matter of Amendment of Part 76, Subpart J, Section 76.501 of the Commission's Rules and Regulations to Eliminate the Prohibition on Common Ownership of Cable Television Systems and National Television Networks, 7 FCC Rcd 6156, ¶ 17 (1992).

[33] 1996 Telecommunications Act, § 202(i), repealing 47 U.S.C. § 613(a)(1).

[34] 1996 Telecommunications Act, § 202(h).

Indeed, the rule has far outlived its original purpose. The Commission adopted the television station/cable system cross-ownership rule almost 30 years ago to counteract and prevent further what it observed then to be significant national and local concentration of control in television broadcasting.[35] Specifically, the Commission believed that because the cable industry was in its nascent stages, it needed protection from the broadcast industry, with the concern being that a local broadcaster might have an incentive to delay construction in the deployment of a commonly owned cable system. At the time of the adoption of the television station/cable system cross-ownership rule, such concerns arose because there were only three television networks and, together, they controlled 95.2 percent of prime time viewing nationwide.[36] By any measure, the cable industry today is no longer an emerging, immature business. Cable service is now available to 97 percent of all television households in the United States.[37] Clearly, any fears that a local broadcaster might delay expansion of commonly owned cable facilities no longer have any justification.[38]

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[35]In the Matter of Amendment of Part 74, Subpart K, of the Commission's Rules and Regulations Relative to Community Antenna Television Systems, Second Report and Order, 19 RR 2d 1775, ¶ 10 (1970).

[36]Id. at ¶¶ 10-12.

[37]In the Matter of Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, Sixth Annual Report, CS Docket No. 99-230, FCC 99-418, ¶ 19 (released Jan. 14, 2000) ("Sixth Annual Competition Report").

[38]Moreover, any fears that cable operators may discriminate in carriage or channel positioning in favor of commonly-owned television broadcast stations are fully addressed by other Commission regulations. Indeed, the Commission's must-carry [47 C.F.R. § 76.56] and channel positioning [47 C.F.R. § 76.57] rules prevent cable operators from engaging in any such discriminatory treatment and thus nullify concerns about carriage that may at one time have (continued...)

It is beyond dispute that healthy competition and competitive alternatives to broadcast television currently exist locally and nationwide. There are now six significant national commercial television networks, an increase of 100 percent from the time of the initial adoption of the television station/cable system cross-ownership ban. The four largest television broadcast networks currently account for only a combined 52 percent share of prime time viewing among all television households, a decline of over 43 share points since the television station/cable system cross-ownership rule was adopted.[39] This decline in audience share is attributable to the fact that, in the years that have passed since the rule's adoption, several new video delivery systems have been introduced, including DBS, SMATV and wireless cable (MDS/MMDS).

Of these new delivery systems, DBS in particular has experienced explosive growth. The Commission's recent annual competition report noted that DBS providers served more than 10 million subscribers nationwide as of June 1999, representing 12.46% of the total multichannel video programming distributor ("MVPD") subscribers nationwide at that time.[40] As of January 4, 2000, DBS subscribership nationwide has topped 11.1 million.[41] DBS subscribership can be expected to increase even more significantly as a result of recent congressional amendments to the Satellite Home Viewer Act ("SHVA") which establish a permanent compulsory copyright license allowing DBS providers to retransmit local broadcast television signals to subscribers who reside

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[38](...continued)
justified a television station/cable system cross-ownership restriction.

[39]Sixth Annual Competition Report at ¶ 102.

[40]Id. at ¶ 70 and Table C-1.

[41]See http://www.dbsdish.com/dbsdata.html (DBS subscribership as of Jan. 4, 2000).

inside a television station's DMA. As a result of this legislation, the service offerings of cable operators and DBS providers are undoubtedly reasonable substitutes, resulting in even more competition between cable operators and DBS providers for MVPD subscribers. In fact, analysts predict that DBS subscribership nationwide will grow to an estimated 46.1 million subscribers by the year 2008 as a result of the recent SHVA amendments.[42]

Thus, a competitive environment now exists where there are not only a greater number of local media competitors, but also a distribution of viewership among broadcasters, cable operators and other video delivery entities that is far more balanced than the viewership distribution in 1970 at the time of the adoption of the television station/cable system cross-ownership rule. Indeed, other commenters in different industries that have filed supplemental "emergency" petitions in this Biennial Review proceeding agree that the unprecedented competition existing in the entertainment marketplace today compels the relaxation or complete elimination of many of the Commission's media ownership rules.[43]

In fact, elimination of the television station/cable system cross-ownership rule is consistent with, and required by the logic of, recent Commission decisions loosening other local ownership rules. For example, the Commission recently relaxed the application of both its duopoly and its one-to-a-market rules as a result of its recognition of the "increase in the number and types of media outlets available to local communities" and the resultant increase in the competition faced

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[42]"Industry Divided Over Role of SHVIA in Big Dec. DBS Sales," Communications Daily, Jan. 7, 2000, at 5-6.

[43]See Fox Petition at 12-14 (arguing for the elimination of the national broadcast ownership cap); NAA Petition at 7 (arguing for the elimination of the television station/newspaper cross-ownership ban).

by broadcast stations at the local level.[44] Chairman Kennard noted in his separate statement in that proceeding that:

> [W]e are adopting commonsense rules that recognize the dramatic changes that the media marketplace has undergone since our broadcast ownership rules were adopted 30 years ago. . . . In such an age, we need to provide broadcasters with flexibility to seize opportunities and compete in this increasingly dynamic media marketplace. These items will not only help them compete with the growing number of alternative media. They will also help preserve free local broadcast service.[45]

As described earlier, the television station/cable system cross-ownership rule particularly affects the ability of an emerging network such as The WB, which has a distant connection with a cable operator, to compete in today's environment. Moreover, just as a concern with preserving "free local broadcast service" led to the recent relaxation of both the duopoly and the one-to-a-market rules, the elimination of the television station/cable system cross-ownership rule would create new opportunities for localism, especially in smaller markets, as co-owned television stations and cable systems combined resources to provide more local programming (*e.g.*, coverage of local high school sports). Thus, the same logic that compelled the Commission to loosen the duopoly and the one-to-a-market rules dictates complete elimination of the television station/cable system cross-ownership rule, particularly in light of the Commission's historic proclivity to repeal the ban.

At the very least, while the Commission considers the long-overdue elimination of the ban, parties should be allowed to elect to enter into a television station/cable system combination in

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[44] In the Matter of Review of the Commission's Regulations Governing Television Broadcasting, 14 FCC Rcd 12903, ¶¶ 28-29, 37 (1999) ("Television Broadcasting Order").

[45] Id., Separate Statement of Chairman William E. Kennard (Aug. 5, 1999).

lieu of taking advantage of the relaxed duopoly or one-to-a-market rules in that particular DMA. For example, under the current regulatory scheme, an entity is eligible under the relaxed duopoly rule to own two television stations licensed in the same DMA under certain circumstances.[46] An entity is also eligible to own up to two commercial television stations (if eligible under the relaxed duopoly rule) and six commercial radio stations in the same DMA under the relaxed one-to-a-market rule if at least twenty independently owned media voices would remain in the DMA post-merger.[47] However, an entity eligible to own two commercial television stations and six commercial radio stations can elect instead to own just one commercial television station and seven commercial radio stations in the same DMA, effectively substituting an extra radio station for the extra television station.[48] In allowing for this substitution, the Commission first noted that "broadcast television is the single most important source of news for the majority of Americans" and determined as a result that "in markets where there is sufficient competition and diversity to justify combinations involving two *television* stations and six radio stations, broadcasters should have the flexibility to purchase an additional *radio* station instead of a second television station."[49]

The same rationale applies in allowing an entity to elect, for example, to offer cable service in the applicable DMA instead of owning another television station in taking advantage of the new duopoly or one-to-a-market rules. Thus, for example, an entity eligible to own two

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[46] 47 C.F.R. § 73.3555(b).

[47] 47 C.F.R. § 73.3555(c)(2)(i)(A).

[48] 47 C.F.R. § 73.3555(c)(2)(i)(B).

[49] Television Broadcasting Order at ¶ 108.

commercial television stations in the same DMA should have flexibility to elect instead to own one commercial television station and also own cable systems in the DMA in lieu of a second television station. This conclusion is buttressed by the fact that, in determining that at least twenty independently owned media voices would remain for purposes of the one-to-a-market rule, cable television counts as one voice in the DMA, regardless of the number of individual cable systems operating in that DMA.[50] If an entity can substitute one commercial radio station as its extra voice instead of an additional commercial television station for purposes of the one-to-a-market rule, then that entity should also be allowed to choose to substitute local cable systems as its extra voice in that DMA in lieu of an additional commercial television station. Such an interim solution will avoid compounding the current competitive harm borne by The WB in complying with a cross-ownership rule that the Commission has already determined to be unnecessary.

VI. CONTINUED APPLICATION OF THE TELEVISION STATION/CABLE SYSTEM CROSS-OWNERSHIP RULE IS UNCONSTITUTIONAL.

The current competitive landscape further renders continued application of the television station/cable system cross-ownership rule unconstitutional. As a direct restriction on both television broadcasters' and cable operators' speech, the television station/cable system cross-ownership ban could be judged under strict constitutional scrutiny, requiring the Commission to prove that the ban advances a compelling government interest through an almost precise fit.[51] At

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[50]47 C.F.R. § 73.3555(c)(3)(iv).

[51]See, e.g., Arkansas Writers Project, Inc. v. Ragland, 481 U.S. 221, 231 (1987).

the very least, the ban is subject to intermediate scrutiny,[52] under which the Commission must demonstrate that the restriction on speech furthers an important or substantial governmental interest and is narrowly tailored to the furtherance of that interest.[53]

In its Notice of Inquiry in the instant proceeding, the Commission advances diversity[54] and competition as the governmental interests to be advanced by the television station/cable system cross-ownership rule.[55] However, as noted above, the Commission determined seven years ago that the video marketplace had changed to such an extent that the television station/cable system cross-ownership rule could no longer be justified. The intervening seven years have borne witness to an even more rapidly-accelerating proliferation of video delivery sources and the concomitant explosion of programming options. Indeed, to the extent that an argument could have been made in the past that cable operators possessed the power to serve as a competitive bottleneck, a

[52]Turner Broadcasting System, Inc. v. FCC, 512 U.S. 622, 642-43 (1994). Although in the broadcast context, courts may apply a less demanding standard, that standard is derived from the inherent scarcity of spectrum allocated for broadcast use and is inapplicable when considering an entity's right to deliver cable television programming or services. Id. at 637-39.

[53]U.S. v. O'Brien, 391 U.S. 367, 377 (1968).

[54]Section 202(h) of the 1996 Act by its terms restricts the Commission review of broadcast ownership rules "to determine whether any of such rules are necessary in the public interest *as the result of competition*." 1996 Telecommunications Act, § 202(h) (emphasis added). Thus, diversity arguably is not a legitimate focus of the inquiry into broadcast ownership under Section 202(h). Moreover, the D.C. Circuit has cast doubt on the constitutionality of broadcast regulation as a tool to advance diversity. Bechtel v. FCC, 957 F.2d 873 (D.C. Cir. 1992); Lutheran Church – Missouri Synod v. FCC, 141 F.3d 344 (D.C. Cir. 1998), pet. for reh'g denied, 154 F.3d 487, pet. for reh'g *en banc* denied, 154 F.3d 494 (D.C. Cir. 1998). In any event, the current competitive landscape, in which numerous and diverse types of video delivery technologies compete for consumers' attention (as noted above), ensures that the American public is exposed to a diverse selection of programming.

[55]1998 Biennial Review NOI at ¶¶ 4-6.

majority of the Supreme Court has agreed that this rationale no longer applies in today's environment.[56] In any event, the Commission's own recognition in 1992 that the competitive landscape had changed to such an extent that it felt compelled to recommend that Congress repeal the television station/cable system cross-ownership rule serves as undeniable proof that the ban is not necessary, and thus, not narrowly tailored to serve the governmental interests in competition and diversity. Without question, competition is even more vibrant today than it was in 1992.

In the analogous context of the telephone/cable cross-ownership prohibition, the Commission found that the concerns originally justifying the ban had become "attenuated" due to competitive developments, and accordingly recommended that Congress repeal the statutory prohibition.[57] Based in part on the Commission's own determination that the telephone/cable cross-ownership ban no longer served a significant government interest, numerous federal courts held the prohibition to be unconstitutional.[58] For example, in Ameritech Corp. *et al.* v. United States, the court noted that the FCC had recommended repeal of the telephone/cable cross-ownership ban based on its finding that the prohibition no longer furthered the achievement of its

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[56]Turner Broadcasting System, Inc. v. FCC, 117 S.Ct. 1174 (1997).

[57]In the Matter of Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58, 7 FCC Rcd 5781, ¶¶ 135-41 (1992).

[58]See, e.g., Chesapeake and Potomac Tel. Co. of Virginia v. United States, 830 F. Supp. 909 (E.D. Va. 1993), aff'd, 42 F.3d 181 (4th Cir. 1994), vacated and remanded, 516 U.S. 415 (1996); US West, Inc. v. United States, 855 F. Supp. 1184 (W.D. Wash 1994), aff'd, 48 F.3d 1092 (9th Cir. 1994), vacated and remanded, 516 U.S 1155 (1996); Southern New England Tel. Co. v. United States, 886 F. Supp. 211 (D. Conn. 1995); Bellsouth Corp. v. United States, 868 F. Supp. 1335 (N.D. Ala. 1994).

original objectives in light of changed competitive circumstances.[59] Accordingly, the court held that the ban "imposes a greater-than-necessary burden on plaintiffs' speech and therefore is not narrowly tailored to serve the Government's significant interest . . . ."[60]

Just as the telephone/cable cross-ownership rule was declared unconstitutional in light of changed competitive circumstances, in today's environment the television station/cable system cross-ownership rule cannot be considered narrowly tailored to advance a significant government interest, particularly in light of the Commission's own finding that the original justifications for the rule are no longer valid. Therefore, the rule cannot survive constitutional scrutiny.

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[59]867 F. Supp. 721, 734-736 (N.D. Ill. 1994).

[60]Id. at 736.

VII. CONCLUSION

WHEREFORE, for the foregoing reasons, The WB respectfully requests that the Commission eliminate the television station/cable system cross-ownership rule as well as the dual network rule.

Respectfully submitted,

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EXHIBIT 1

WB OVER-THE-AIR COVERAGE
(as of 4/96)

I. Full Power Affiliates (Primary)

Call Sign	DMA (Rank)	City of License	TVHH (1995-96)*
WPIX	New York, NY (1)	New York, NY	6,711,450
KTLA	Los Angeles, CA (2)	Los Angeles, CA	4,942,440
WCIU	Chicago, IL (3)	Chicago, IL	3,124,340
WGN	Chicago, IL (3)	Chicago, IL	--
WPHL	Philadelphia, PA (4)	Philadelphia, PA	2,654,080
KBWB (formerly KOFY)	San Francisco, CA (5)	San Francisco, CA	2,278,480
WLVI	Boston, MA (6)	Cambridge-Boston, MA	2,150,110
WBDC	Washington, DC (7)	Washington, DC	1,908,470
WJAL	Washington, DC (7)	Washington, DC	--
KDAF	Dallas-Ft. Worth, TX (8)	Dallas, TX	1,848,550
WDWB (formerly WXON)	Detroit, MI (9)	Detroit, MI	1,771,950
WATL	Atlanta, GA (10)	Atlanta, GA	1,625,230
KHTV	Houston, TX (11)	Houston, TX	1,595,350
KTZZ	Seattle-Tacoma, WA (12)	Seattle, WA	1,492,300
KLGT	Minneapolis-St. Paul, MN (14)	Minneapolis-St. Paul, MN	1,428,100
WWWB (formerly WTMV)	Tampa-St. Petersburg-Sarasota, FL (15)	Lakeland-Tampa, FL	1,411,440
WBZL (formerly WDZL)	Miami-Ft. Lauderdale, FL (16)	Miami-Ft. Lauderdale, FL	1,363,260
KASW	Phoenix, AZ (17)	Phoenix, AZ	1,212,850
KMOH	Phoenix, AZ (17)	Kingman, AZ	--
KWGN	Denver, CO (18)	Denver, CO	1,185,410

*Source: Television and Cable Factbook (1997)

Call Sign	DMA (Rank)	City of License	TVHH (1995-96)*
KMAX (formerly KPWB)	Sacramento-Stockton-Modesto, CA (20)	Sacramento-Stockton, CA	1,115,460
KPLR	St. Louis, MO (21)	St. Louis, MO	1,110,150
WKCF	Orlando-Daytona Beach-Melbourne, FL (22)	Clermont-Orlando, FL	1,021,970
KWBP	Portland, OR (24)	Salem, OR	952,690
WNDY	Indianapolis, IN (25)	Marion-Indianapolis, IN	938,920
KSWB (formerly KTTY)	San Diego, CA (26)	San Diego, CA	917,180
WBNE (formerly WTVU)	Hartford & New Haven, CT (27)	New Haven, CT	915,710
WFVT	Charlotte, NC (28)	Rock Hill, SC	817,510
WRAZ	Raleigh-Durham, NC (29)	Raleigh, NC	814,730
KNPX (formerly WKZX)	Nashville, TN (33)	Cookeville, TN	782,940
WNAB	Nashville, TN (33)	Nashville, TN	--
WWHO	Columbus, OH (34)	Chillicothe, OH	735,390
KUWB (formerly KOOG)	Salt Lake City, UT (36)	Ogden, UT	670,650
WVBT	Norfolk-Portsmouth-Newport News, VA (40)	Virginia Beach-Norfolk, VA	631,720
WNOL	New Orleans, LA (41)	New Orleans, LA	620,760
WBFX (formerly WEJC)	Greensboro-High Point-Winston Salem, NC (46)	Lexington, NC	567,740
WBNA	Louisville, KY (50)	Louisville, KY	550,390
WBSG	Jacksonville, FL-Brunswick, GA (54)	Brunswick, GA	493,160
KGMC	Fresno-Visalia, CA (55)	Clovis-Fresno, CA	491,290
WUPV (formerly WAWB)	Richmond-Petersburg, VA (59)	Ashland, VA	460,890
KNVA	Austin, TX (63)	Austin, TX	436,210
KFBT	Las Vegas, NV (64)	Las Vegas, NV	427,330

*Source: Television and Cable Factbook (1997)

Call Sign	DMA (Rank)	City of License	TVHH (1995-96)*
WDRL (formerly WDRG)	Roanoke-Lynchburg, VA (67)	Danville, VA	398,760
WACY	Green Bay-Appleton, WI (70)	Appleton, WI	376,380
KXVO	Omaha, NE (75)	Omaha, NE	364,960
KSHV	Shreveport, LA (77)	Shreveport, LA	360,450
WYLE	Huntsville-Decatur-Florence, AL (81)	Florence, AL	325,840
KYLE	Waco-Temple-Bryan, TX (94)	Bryan, TX	281,570
KKWB (formerly KJLF)	El Paso, TX (99)	El Paso, TX	262,410
WGSA (formerly WUBI)	Savannah, GA (100)	Baxley, GA	255,740
WMMP (formerly WBNU)	Charleston, SC (109)	Charleston, SC	223,730
WGSE	Florence-Myrtle Beach, SC (116)	Myrtle Beach, SC	212,610
KREN	Reno, NV (119)	Reno, NV	209,060
KTVC (formerly KROZ)	Eugene, OR (120)	Roseburg, OR	206,360
KEPR	Yakima-Pasco-Richland-Kennewick, WA (123)	Pasco-Kennewick-Richland, WA	197,130
WSWS	Columbus, GA (125)	Opelika-Auburn, AL	187,060
KNLJ	Columbia-Jefferson City, MO (145)	Jefferson City, MO	146,520
WGVP	Albany, GA (150)	Valdosta, GA	133,420
WPXH (formerly WNAL)	Anniston, AL (201)	Gadsden, AL	42,960

Full Power Primary Total **58,361,560 = 60.21%**

*Source: Television and Cable Factbook (1997)

II. Full Power Affiliates (Secondary)

Call Sign	DMA (Rank)	City of License	TVHH (1995-96)*
WUAB	Cleveland, OH (13)	Lorain-Cleveland, OH	1,461,410
WTVX	West Palm Beach-Ft. Pierce, FL (44)	Ft. Pierce-Stuart-Vero Beach-Palm Beach, FL	587,120
KASY	Albuquerque-Santa Fe, NM (48)	Albuquerque, NM	554,290
KYES	Anchorage, AK (156)	Anchorage, AK	123,200
KYUS	Billings, MT (167)	Miles City, MT	94,360
WYDC	Elmira, NY (170)	Corning, NY	93,240
KKTU	Cheyenne, WY-Scottsbluff, NE-Sterling, CO (194)	Cheyenne, WY	50,090
KTWO	Casper-Riverton, WY (197)	Casper, WY	47,660

Full Power Secondary Total **3,011,370 = 3.11%**

Full Power Primary and Secondary Total **61,372,930 = 63.32%**

*Source: Television and Cable Factbook (1997)

III. Low Power Affiliates (Primary)

Call Sign	DMA (Rank)	City of License	TVHH (1995-96)*
WBPA-LP	Pittsburgh, PA (19)	Pittsburgh, PA	1,148,860
WMJF-LP	Baltimore, MD (23)	Towson, MD	989,470
WBQC-LP	Cincinnati, OH (30)	Cincinnati, OH	800,890
WYLN-LP	Wilkes Barre-Scranton, PA (49)	Hazelton, PA	552,870
WUCT-LP	Dayton, OH (53)	Dayton, OH	502,850
WBQP-LP	Mobile, AL-Pensacola, FL (61)	Pensacola, FL	448,780
W21BF	Toledo, OH (66)	Fremont, OH	407,170
KWBS-LP	Springfield, MO (76)	Springfield, MO	362,270
WQTV-LP	Paducah, KY-Cape Girardeau, MO-Harrisburg-Mount Vernon, IL (79)	Murray, KY	354,080
WYHB-LP	Chattanooga, TN (87)	Chattanooga, TN	305,980
W51CB	Burlington, VT-Plattsburgh, NY (91)	Burlington, VT	292,870
KWBJ-LP	Baton Rouge, LA (98)	Morgan City, LA	266,640
KTTE-LP (formerly K11TT)	Baton Rouge, LA (98)	Baton Rouge, LA	--
KTPN-LP	Tyler-Longview, TX (108)	Tyler, TX	229,080
KBSC-LP	Medford-Klamath Falls, OR (144)	Brookings, OR	150,900
WBGR-LP	Bangor, ME (155)	Bangor, ME	127,160
KSCT-LP	Anchorage, AK (156)	Sitka, AK	--

Low Power Primary Total **6,939,870 = 7.16 %**

*Source: Television and Cable Factbook (1997)

IV. Low Power Affiliates (Secondary)

Call Sign	DMA (Rank)	City of License	TVHH (1995-96)*
WWAZ-LP (formerly W52AZ)	Evansville, IN (97)	Evansville, IN	273,000
KLAF-LP	Lafayette, LA (121)	Lafayette, LA	203,880

Low Power Secondary Total **476,880 = 0.49 %**

Low Power Primary and Secondary Total **7,416,750 = 7.65 %**

Full and Low Power Total **68,789,680 = 70.97 %**

112859.1

*Source: Television and Cable Factbook (1997)

CERTIFICATE OF SERVICE

I, Cecilia Gornak, a secretary at the law firm of Fleischman and Walsh, L.L.P., hereby certify that copies of the foregoing "Supplemental Comments of The WB Television Network" were served this 27th day of January, 2000, via first-class mail, postage prepaid, upon the following:

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